

1-240A035

LAW OFFICES OF

ROBERT G. SHEPHERD, JR.

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ROBERT G. SHEPHERD, JR.

LOUIS E. GITOMER

FAX:

(202) 728-1196

August 28, 1991

Honorable Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RECORDATION NO 9749-E
FILED 1425

AUG 28 1991 -2 15 PM

Dear Secretary Strickland:

INTERSTATE COMMERCE COMMISSION

I have enclosed duplicate originals and two copies of the document described below, to be recorded pursuant to 49 U.S.C. 11303.

The document is an Assignment and Assumption Agreement, a secondary document dated August 23, 1991. The primary documents to which this is connected are recorded under Recordation Nos. 9722 and 9749. We request that this assignment be recorded under Recordation Nos. 9722-E and 9749-E.

The names and addresses of the parties to the assignment are as follows:

American Security Bank, National Association
1501 Pennsylvania Avenue, NW
Washington, DC 20013

GATX Capital Corporation
Four Embarcadero Center
Suite 2200
San Francisco, CA 94111

A description of the equipment covered by the assignment consists of: 74 SD-40-2 diesel electric locomotives, with the following numbers: CR 8224-8255, inclusive, and CR 6441-6482, inclusive.

A fee of \$30.00 is enclosed. Please return the original to:

Louis E. Gitomer
Suite 1200
1133 15th Street, N.W.
Washington, D.C. 20005

A short summary of the document to appear in the indexes follows:


MOTOR OPERATING UNIT

AUG 28 2 09 PM '91

Honorable Sidney L. Strickland

Assignment and Assumption Agreement, dated August 23, 1991, between American Security Bank, National Association, 1501 Pennsylvania Avenue, NW, Washington, DC 20013, and GATX Capital Corporation, Four Embarcadero Center, Suite 2200, San Francisco, CA 94111, and covering: 74 SD-40-2 diesel electric locomotives, with the following numbers: CR 8224-8255, inclusive, and CR 6441-6482, inclusive.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Louis E. Gitomer", written over a horizontal line.

Louis E. Gitomer
Counsel for,
GATX Capital Corporation

Attachments

RECORDATION NO. 9749 - E
AUG 28 1991 - 2 15 PM
INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the "Agreement"), is dated August 23, 1991, by and between American Security Bank, National Association, a national banking association ("Seller"), and GATX Capital Corporation, a Delaware corporation ("Purchaser").

R E C I T A L S

Seller entered into that certain Amended and Restated Trust Agreement No. 1978-4 ("Trust Agreement #4"), dated as of September 1, 1978, among United States Trust Company of New York (the "Owner Trustee"), with Seller, AEIC Investors Co. #9, CUIC Investors Co. #9, EFIC Investors Co. #9, and NACA Investors Co. #9, as "Trustors". Pursuant to Trust Agreement #4, the Owner Trustee entered into a Conditional Sale Agreement (No. 1), dated September 1, 1978, between General Motors Corporation (Electro-Motive Division) (the "Builder"), which was Recorded with the Interstate Commerce Commission ("ICC") on September 29, 1978 and assigned ICC recordation number 9722. The Builder assigned its interest under the Conditional Sale Agreement to Mellon Bank, N.A. (the "Agent"), as agent for certain lenders, pursuant to an Agreement and Assignment (No. 1), which was recorded with the ICC on September 29, 1978 and assigned recordation number 9722-A. The Owner Trustee entered into a Lease of Railroad Equipment (#1), dated September 1, 1978, between Consolidated Rail Corporation (the "Lessee"), and the Owner Trustee, as Lessor, which was recorded with the ICC on September 29, 1978 and assigned ICC recordation number 9722-B. The Owner Trustee assigned the Lease to the Agent pursuant to an Assignment of Lease and Agreement (No. 1), dated September 1, 1978, between the Owner Trustee and the Agent, which was filed with the ICC on September 29, 1978 and assigned ICC recordation number 9722-C.

Contemporaneously with the foregoing, Seller entered into that certain Amended and Restated Trust Agreement No. 1978-5 ("Trust Agreement #5"), dated as of September 1, 1978, among the Owner Trustee, with Seller, AEIC Investors Co. #9, CUIC Investors Co. #9, EFIC Investors Co. #9, and NACA Investors Co. #9, as "Trustors". Pursuant to Trust Agreement #5, the Owner Trustee entered into a Conditional Sale Agreement (No.2), dated September 1, 1978, between the Builder and the Owner Trustee, which was recorded with the ICC on September 29, 1978 and assigned ICC recordation number 9749. The Builder assigned its interest under the Conditional Sale Agreement to the Agent pursuant to an Agreement and Assignment (No. 2), which was recorded with the ICC on September 29, 1978 and assigned ICC recordation number 9749-A. The Owner Trustee entered into a Lease of Railroad Equipment (No. 2), dated September 1, 1978, between the Lessee and the Owner Trustee, as Lessor, which was recorded with the ICC on September 29, 1978 and assigned ICC recordation number 9749-B. The Owner Trustee assigned the Lease to the Agent pursuant to an Assignment of Lease and Agreement (No. 2), dated September 1, 1978, between the Owner Trustee and the Agent, which was filed with the ICC on

September 29, 1978 and assigned ICC recordation number 9749-C.

Seller desires to sell and Purchaser desires to buy the beneficial interest of Seller under Trust Agreement #4 and Trust Agreement #5 and its interest in the railroad equipment beneficially owned pursuant thereto and its interest in the Lease. To effect the sale of such assets, Seller and Purchaser have entered into a Purchase Agreement, dated as of August 15, 1991 (the "Purchase Agreement").

The Purchase Agreement provides, among other things, for the execution and delivery of an assignment and assumption in substantially the form hereof to effect the sale by Seller to Purchaser of all right, title and interest of Seller in and to the Lease Assets referred to below, and the assumption by Purchaser of certain of the obligations of Seller under the Lease Documents referred to below.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto do hereby agree as follows:

1. Definitions. Unless otherwise defined herein, capitalized terms used herein shall have the meanings given to them in the Purchase Agreement or by reference in the Purchase Agreement to other documents.

2. Assignment. Seller does hereby GRANT, BARGAIN, ASSIGN, TRANSFER, SELL, DELIVER AND CONVEY UNTO PURCHASER, ITS SUCCESSORS AND ASSIGNS, TO HAVE AND TO HOLD FOREVER, all of Seller's right, title and interest in and to the Lease Assets as follows: (a) Seller's beneficial ownership interest in and to 50% of each of the Trust Estates established pursuant to the Trust Agreements, (b) the Lease Documents set forth in the attached Schedule 5.1(e), and (c) Seller's interest, as a Trustor of such trusts, in the Lease Property described on the attached Schedule 5.1(i); excluding, however, in each case, any claim, cause of action, liability or obligation in favor of Seller of any nature or description or other right to payment (other than the rights of Purchaser pursuant to Sections 3.1, 7.1(a) and 7.4 of the Purchase Agreement) accruing, arising or relating to any period prior to the date hereof or payable by reason of any act, event or omission occurring or existing prior to the date hereof, whether known or unknown, contingent or otherwise, as of the date hereof (such exclusions are referred to herein as "Prior Claims").

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 5.1 OF THE PURCHASE AGREEMENT AND IN THIS SECTION 2, THE SALE OF THE LEASE ASSETS, INCLUDING THE BENEFICIAL INTEREST IN RESPECT OF THE LEASE PROPERTY, IS MADE "AS IS, WHERE IS," AND NEITHER SELLER NOR ANY OF ITS AFFILIATES SHALL BE DEEMED TO HAVE MADE, AND EACH EXPRESSLY DISCLAIMS, ANY FURTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AND SELLER ASSUMES NO RESPONSIBILITY, NOW OR HEREAFTER, AS TO THE (i)

VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY, QUALITY OF MATERIAL OR WORKMANSHIP, FITNESS FOR USE OR FOR A PARTICULAR PURPOSE, MAINTENANCE OR MARKETABILITY OF ANY LEASE PROPERTY OR AGAINST INFRINGEMENT OF ANY PATENT, COPYRIGHT OR TRADEMARK OR THE LIKE OTHER THAN ANY REPRESENTATION OR WARRANTY THAT ARISES OR MAY BE DEEMED TO ARISE OUT OF ITS COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, (ii) CREDITWORTHINESS OF THE LESSEE, (iii) ADEQUACY OF ANY INSURANCE COVERAGE APPLICABLE TO ANY LEASE PROPERTY, (iv) COLLECTIBILITY OF ANY AMOUNT UNDER ANY LEASE DOCUMENT OR THE DUE EXECUTION, LEGALITY, VALIDITY, SUFFICIENCY, ENFORCEABILITY THEREOF, OR (v) CONCLUSIONS OF LAW AS TO (AS DISTINCT FROM FACTS THAT MAY RELATE TO) THE TAX OR COMMERCIAL CHARACTERIZATION OF ANY LEASE.

PURCHASER'S DECISION TO PURCHASE AND ASSUME SELLER'S RIGHTS, OBLIGATIONS, TITLE AND INTEREST CONVEYED PURSUANT HERETO IS, AND SHALL CONTINUE TO BE, BASED UPON PURCHASER'S OWN INDEPENDENT CREDIT EVALUATION AND PURCHASER HAS NOT RELIED UPON ANY INVESTIGATION OR ANALYSIS CONDUCTED BY SELLER OR ANY OTHER ADVICE OR COMMUNICATION FROM SELLER PRIOR TO THE DATE OF THE PURCHASE AGREEMENT CONCERNING THE FINANCIAL CONDITION OF LESSEE OR ANY OTHER PARTY TO THE DOCUMENTS, THE VALUE OF THE LEASE ASSETS OR ANY COLLATERAL PROVIDED PURSUANT TO THE LEASE DOCUMENTS, OR THE TAX OR ECONOMIC BENEFITS, IF ANY WHICH PURCHASER MAY OR MAY NOT ENJOY AS A RESULT OF SUCH PURCHASE. PURCHASER FURTHER ACKNOWLEDGES THAT IT HAS REQUESTED THAT SELLER PROVIDE TO PURCHASER ALL INFORMATION CONCERNING THE TRANSACTIONS ENTERED INTO PURSUANT HERETO WHICH IS WITHIN THE POSSESSION OF, AVAILABLE TO OR KNOWN BY SELLER. TO THE BEST OF PURCHASER'S KNOWLEDGE, SELLER HAS PROVIDED ALL SUCH INFORMATION TO PURCHASER.

Seller, for itself, its successors and assigns, does hereby warrant and agree with Purchaser, its successors and assigns, that it is the lawful owner of the 50% beneficial ownership interest as a Trustor in each of the Trust Agreements.

3. Assumption. Purchaser hereby confirms that it shall be deemed a party to each of the Lease Documents under which Seller remains liable as a Trustor or Beneficiary, whether secondarily, contingently or otherwise (all such Lease Documents, collectively, "Assumed Documents") and it hereby agrees to be bound by all of the terms of the Assumed Documents and undertakes to assume and hereby assumes, accepts liability for, and agrees that it shall satisfy, discharge, pay in full and perform all of the Assumed Obligations. Seller neither has, nor shall have, any liability or responsibility to any person for the discharge or

performance of any duty or obligation of a Trustor or Beneficiary pursuant to or in connection with the Assumed Documents occurring or arising on and after the date hereof; and Purchaser shall not be responsible to any person for the discharge or performance of any duty or obligation of Seller, as a Trustor or Beneficiary, in connection with the Assumed Documents occurring or arising prior to the date hereof.

4. Indemnity. The terms and provisions of the Purchase Agreement respecting indemnities of the parties are hereby incorporated herein by reference.

5. Further Assurances. Seller agrees to execute and deliver such further documents, and to do such further things, as Purchaser may reasonably request, and at Purchaser's expense, in order to more fully effect this Agreement and the transactions contemplated by the Purchase Agreement. Purchaser agrees to execute and deliver such further documents, and to do such further things, as Seller may reasonably request and at Seller's expense, in order to more fully effect this Agreement and the transactions contemplated hereby and by the Purchase Agreement.

6. Purchaser Representations. Purchaser represents, warrants and confirms:

(a) Purchaser, as transferee, is acquiring the entire Beneficial Interest of Seller, as Trustor, in and to the Trust Estates;

(b) Upon the execution and delivery of this Agreement, Purchaser shall: (i) be deemed a party to the Assumed Documents, including the Trust Agreements and the Participation Agreements, (ii) be bound by all of the terms of the Trust Agreements and the Participation Agreements and (iii) undertake all the obligations, arising after the date hereof, of the Seller, as a Trustor, under the Assumed Documents, including the Trust Agreements and Participation Agreements;

(c) It is an "institutional investor", as such term is defined in clause (ii) of Section 11 in each of the Trust Agreements.

(d) Purchaser is a domestic corporation with net assets in excess of \$50,000,000.

(e) It has full right, power and authority to enter into this Agreement and to perform all duties and obligations of a Trustor under the Trust Agreements and the Participation Agreements;

(f) It is acquiring the Beneficial Interests for its own account for investment and not with a view to public distribution and will not resell or otherwise dispose of any of the Beneficial Interests except in accordance with applicable federal and state securities laws.

7. Governing Law. This instrument shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

8. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed and delivered shall be an original for all purposes, but all such counterparts shall constitute but one and the same instrument.

9. Other Sale Documents. All provisions of the Purchase Agreement and the other Sale Documents shall remain in full force and effect, survive the execution and delivery of this Agreement and are not superseded or otherwise limited or modified by any of the provisions of this Agreement; and all provisions of the Purchase Agreement and the other Sale Documents that are to take effect on the Closing Date are now and shall remain effective from and after the execution and delivery of this Agreement to the same extent contemplated by the Purchase Agreement and the other Sale Documents whether or not reiterated in this Agreement.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed as of the day and year first above written.

SELLER:

AMERICAN SECURITY BANK,
NATIONAL ASSOCIATION

By: Laurence F. Cady
Name: Laurence F. Cady
Title: Vice President

PURCHASER:

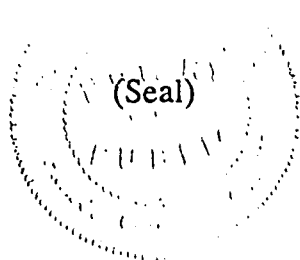
GATX CAPITAL CORPORATION

By: Gene F. Parker
Name: Gene F. Parker
Title: VICE PRESIDENT

STATE OF Maryland)
COUNTY OF Prince Georges)

ss:

On this ___ day of _____, 1991, before me personally appeared Lawrence to me personally known, who, being by me duly sworn, did depose and say that he is an Officer of American Security Bank, National Association, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that of said corporation the seal affixed to the foregoing instrument is such corporate seal; and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Sepe V. Hernandez
Notary Public

My Commission Expires: 7-18-94

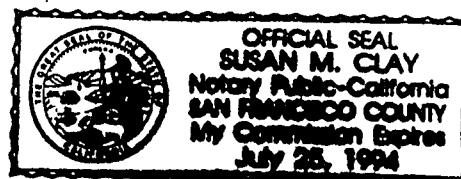
STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO)

ss:

On this 2nd day of Aug., 1991, before me personally appeared Gene F. Prekes, to me personally known, who, being by me duly sworn, says that he is a Vice President of GATX Capital Corporation, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation, by authority of its Board of Directors; and that he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(Seal) Susan M. Clay
Notary Public

My Commission Expires: July 25, 1994



SCHEDULE 5.1(e)

A. Purchased Contracts: Underlying Agreements

- 1) Participation Agreements No. 1 and No. 2 dated as of September 1, 1978 (Conformed copies) among Consolidated Rail Corporation (Lessee); Mellon Bank, N.A., (Agent); United States Trust Company of New York (Trustee); American Security Bank, N.A., AEIC Investors Co. #9, CUIC Investors Co. #9, EFIC Investors Co. #9, and NACA Investors Co. #9 (Trustors).
- 2) Amendment Agreement to Participation Agreement No. 1 and No. 2 dated as of June 1, 1985.
- 3) Lease of Railroad Equipment No. 1 and No. 2 dated as of September 1, 1978 between Consolidated Rail Corporation (Lessee) and United States Trust Company of New York (Trustee).
- 4) Assignment of Lease and Agreement dated as of September 1, 1978 (No. 1 and No.2)
- 5) Trust Agreement dated as of August 30, 1978 (No. 1 and No. 2) among American Security Bank, N.A.; CUIC Investors Co. #9; AEIC Investors Co. #9, EFIC Investors Co. #9; NACO Investors Co. #9 (Trustors) and United States Trust Company of New York (Trustee).
- 6) Amended and Restated Trust Agreement No. 1978-4 and No. 1978-5 dated as of September 1, 1978 among American Security Bank, N.A.; CUIC Investors Co. #9; AEIC Investors Co. #9, EFIC Investors Co. #9; NACO Investors Co. #9 (Trustors) and United States Trust Company of New York (Trustee).
- 7) Conditional Sale Agreement No. 1 and No. 2 dated September 1, 1978 between General Motors Corporation (Builder) and United States Trust Company of New York (Trustee).
- 8) Agreement and Assignment No. 1 and No 2 dated as of September 1, 1978 between General Motors Corporation (Builder) and Mellon Bank, N.A. (Agent).
- 9) Letter Agreement dated September 1, 1978 related to CSA Assignments from Mellon Bank, N.A. (Agent).
- 10) Amendment Agreement No. 1 and No. 2 dated February 1, 1979 among United States Trust Company of New York (Trustee), American Security Bank, N.A., AEIC Investors Co. #9, CUIC Investors Co. #9, EFIC Investors Co. #9 and NACA Investors Co. #9 (Trustors), Consolidated Rail Corporation (Lessee), Mellon Bank, N.A. (Agent) and General Motors Corporation (Builder).
- 11) Memorandum of Closing Documents dated September 26, 1978.
- 12) Consolidated Rail Corporation (Lessee) Assistant Secretary's Certificate.
- 13) Consolidated Rail Corporation (Lessee) Certificate with Respect to Business Prospects and Financial Condition dated September 29, 1978.
- 14) Certificate of Chief Mechanical Officer of Consolidated Rail Corporation (Lessee).
- 15) Certificate with Respect to Use of Equipment of Consolidated Rail Corporation (Lessee).



- 16) Consolidated Rail Corporation (Lessee) Certificate of Insurance expires 10/1/78.
- 17) Consolidated Rail Corporation (Lessee) Certificate of Insurance (\$50mm liability).
- 18) Opinion of Lessee Counsel dated September 29, 1978.
- 19) Opinion of Lessee's Canadian Counsel dated October 13, 1978.
- 20) 2 Corporate Resolutions of Builder (General Motors) dated September 29, 1978 and November 2, 1978.
- 21) 2 letters Assigning Builders Interest to Mellon Bank, N.A. (Assignee) dated September 29, 1978 and November 2, 1978.
- 22) Secretary's Certificates for 4 Equity Participants (CUIC Investors Co. #9, AEIC Investor's Co. #9, EFIC Investors Co. #9, NACA Investors Co. #9) dated September 29, 1978 and November 2, 1978.
- 23) Resolutions and Opinions of Counsel for 4 Equity Participants dated November 2, 1978.
- 24) Certificate of 4 Equity Participants dated September 29, 1978 and November 2, 1978.
- 25) Letter from ASB (Owner Participant) attesting to good title dated September 28, 1978 and November 2, 1978.
- 26) ASB Certificates of Valid Signature dated September 28, 1978 and November 2, 1978.
- 27) Secretary's Certificates of ASB dated September 28, 1978 and November 2, 1978.
- 28) ASB Opinions of Counsel dated September 28, 1978 and November 2, 1978.
- 29) Secretary's Certificates of Mellon Bank N.A. (Agent) dated September 29, 1978 and November 2, 1978.
- 30) Certificates of Assistant Secretary of U.S. Trust Co. of New York (Owner Trustee) dated September 28, 1978 and November 2, 1978.
- 31) Appointments of Authorized Representative of Owner Trustee dated September 28, 1978 and November 2, 1978.
- 32) Opinions of Owner Trustee Counsel dated September 29, 1978 and November 2, 1978.
- 33) 7 Bills of Sale, Invoices, Opinion of Builder Counsel for 74 locomotives, total invoice cost \$44,189,830.
- 34) 20 Certificates of Acceptance for 74 locomotives signed by representative of Trustee and Lessee (U.S. Trust and Conrail).
- 35) Tax Opinion of Owner Participant's Counsel dated September 28, 1978.



SCHEDULE 5.1(l)

LEASE PROPERTY

Conrail #1

| <u>Builder</u> | <u>Type</u> | <u>Specifi- cations</u> | <u>Builder's Plant</u> | <u>Quantity</u> | <u>Lessee's Identification Numbers (Both Inclusive)</u> | <u>Average Unit Base Price</u> | <u>Total Base Price</u> |
|---|----------------------------|-----------------------------|----------------------------|-----------------|---|------------------------------------|-----------------------------|
| General Motors Corporation (Electro-Motive Division) | 2,000 h.p. Model GP38-2 | 8090 | La Grange, IL | 32 | CR8224 - CR8255 | \$523,115 | \$16,739,680 |
| General Motors Corporation (Electro-Motive Division) | 3,000 h.p. Model SD40-2 | 8087 | La Grange, IL | 34 | CR6441 - CR6474 | 653,575 | 22,221,550 |
| | | | | | | | <u>\$38,961,230</u> |

Conrail #2

| <u>Builder</u> | <u>Type</u> | <u>Specifi- cations</u> | <u>Builder's Plant</u> | <u>Quantity</u> | <u>Lessee's Identification Numbers (Both Inclusive)</u> | <u>Average Unit Base Price</u> | <u>Total Base Price</u> |
|---|--|-----------------------------|----------------------------|-----------------|---|------------------------------------|-----------------------------|
| General Motors Corporation (Electro-Motive Division) | 3,000 h.p. Model SD40-2 Diesel-Electric Locomotives | 8087 | La Grange, IL | 8 | CR6475 - CR6482 | \$653,575 | \$5,228,600 |

